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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,456	11/30/2005	David Thomas Marr	XA-10292	3830
181 7590 06/16/2009 MILES & STOCKBRIDGE PC 1751 PINNACLE DRIVE SUITE 500 MCLEAN, VA 22102-3833				
EXAMINER				
NIESZ, JASON KAROL				
ART UNIT		PAPER NUMBER		
3751				
NOTIFICATION DATE		DELIVERY MODE		
06/16/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milestockbridge.com
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Office Action Summary

Application No.

10/526,456

Applicant(s)

MARR ET AL.

Examiner

JASON K. NIESZ

Art Unit

3751

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Broll et al. (DE 3742433 A1).

In Re claims 11 and 12 Broll discloses a method for protecting a liquid from oxygen damage comprising the steps of evacuating the gas in the liquid bottle, introducing a metered quantity of CO₂, and adding an amount of gas from an annular boiler (abstract).

3. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson (US 4,434,810).

In Re claim 13 with reference to Figure 11 Atkinson discloses a stopper (80) having a skirt (76) a bi directional valve (82). The examiner notes that the resiliency of the valve members (82) indicates that a certain threshold pressure must be reached in order to open said valve.

In Re claim 14 with reference to Figure 11 Atkinson discloses a flutter valve (82).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over XP-002260002 (provided by applicant) in view of Atkinson.

In Re claim 1 XP discloses a stopper, a vacuum pump and a gas cylinder. XP doesn't disclose a bi-directionally valved stopper. XP instead uses two different stoppers for the evacuation and pressurizing steps. With reference to Figure 11 Atkinson discloses a bi-directionally valved stopper (76) which can be used to prevent the passage of gas through the neck of a bottle unless a certain pressure is met. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the XP reference by using the bi-directionally valved stopper from Atkinson, in order to eliminate the need to change stoppers between the evacuation and pressurizing steps.

6. Claims 2, 3, 5, 7 and 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenny (US Patent 6,391,629 B1) in view of Angehrn et al (US Patent 6,530,401 B1).

In Re claim 2 with reference to Figure 3 Jenny discloses an apparatus comprising a container with a bi-directional valved stopper (3). With reference to Figure 5 Jenny further discloses a vacuum source (24) communicating with the container and a

means for disconnecting said vacuum source (29c). Jenny also discloses an inert gas source (26a) a pneumatic circuit (41) and a means for ceasing the supply of inert gas (29a).

Jenny doesn't disclose a socket.

With respect to Figure 1 Angehrn discloses an apparatus for modifying the atmosphere in a container comprising a socket type connector (E).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Jenny apparatus by using a socket type connector to secure the container, in order to prevent movement during atmospheric modification.

In Re claim 3 with reference to Figure 5 Jenny discloses a vacuum pump (24). Jenny doesn't disclose a switch. Jenny instead discloses a valve which is used to disconnect the vacuum pump from the container. Switches were well known in the art as a way to control an apparatus. It would have been obvious to one of ordinary skill in the art to try using either a switch or a valve to disconnect the vacuum source depending on specific application. Modifying the Jenny apparatus by adding a switch would make the device manual and allow the user greater control over the atmospheric modification process.

In Re claim 5 with reference to Figure 5 Jenny discloses a second gas source (26b) and a means for ceasing the supply of a second gas (29b).

In Re claim 7 Jenny discloses all of the limitations but doesn't disclose the use of argon. However, one of ordinary skill in the art would know that the Jenny device was capable of modifying the container atmosphere with any desired gas including argon.

In Re claim 8 with reference to Figure 5 the examiner notes that the "automatic" functioning of the Jenny device (Column 2, lines 1-6), indicates that a controller of some sort actuates both the means for disconnecting said vacuum source and the supply of inert gas.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over XP in view Atkinson and in further view of Angehrn.

In Re claim 2 XP discloses a stopper, a vacuum pump and a gas cylinder. XP doesn't disclose a socket, a bi-directionally valved stopper, a means for disconnecting the vacuum source or a means for ceasing the supply of inert gas. The step of connecting the CO₂ cylinder to the bottle after the vacuum pump has evacuated all of the air inherently indicates a means for disconnecting the vacuum pump. Furthermore, it was commonly known in the art to use a switching device to cease the supply of a gas to a container once a desired amount of gas had been added. With reference to Figure 1 Angehrn discloses a device for modifying the atmosphere in a wine bottle comprising a socket type connector (E). With reference to Figure 11 Atkinson discloses a bi-directionally valved stopper (76) which can be used to prevent the passage of gas through the neck of a bottle unless a certain pressure is met.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the XP apparatus by adding a means for ceasing

supply of CO₂, in order to allow a user to control the amount of CO₂ added to the bottle. Furthermore, it would have been obvious to use a socket type connector, as taught by Angehrn, in order to prevent the bottle from shifting relative to the apparatus during evacuation and filling. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the XP reference by using the bi-directionally valved stopper from Atkinson, in order to eliminate the need to change stoppers between the evacuation and pressurizing steps.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenny in view of Angehrn and in further view of Simon (US 4,475,576).

9. In Re claim 4 with reference to Figure 3 Jenny in view of Angehrn as applied to claim 2 above discloses all the limitations, including pair of oppositely oriented backflow valves (51, 52). Jenny doesn't disclose a flutter valve; Jenny is silent on the exact nature of said valves. With reference to Figure 8 Simon discloses a container stopper containing two oppositely oriented flutter valves (38, 42) one of which allows gas into a container and another of which allows gas to exit the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Jenny apparatus by making the two backflow valves flutter valves, as taught by Simon, in order to provide the needed backflow prevention functionality.

10. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenny in view of Angehrn in further view of Berresford et al. (US Patent 5,215,129).

In re claims 9 and 10 Jenny in view of Angehrn as applied to claims 2 and 3 above discloses all the limitations, but doesn't disclose a switch. With reference to

Figure 3 Berresford discloses an apparatus for modifying a container atmosphere comprising a switch (58) which is used to govern the atmosphere modifying process. The examiner notes that a resilient tab, (a type of spring), (56) biases the switch in the off position. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Jenny apparatus by adding the switch from the Berresford reference, in order to prevent the device from functioning when no container is present.

11. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over XP in view of Angehrn and Atkinson and in further view of Berresford et al. (US Patent 5,215,129).

In re claims 9 and 10 XP in view of Angehrn and Atkinson as applied to claim 2 above discloses all the limitations, but doesn't disclose a switch. With reference to Figure 3 Berresford discloses an apparatus for modifying a container atmosphere comprising a switch (58) which is used to govern the atmosphere modifying process. The examiner notes that a resilient tab, (a type of spring), (56) biases the switch in the off position. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Jenny apparatus by adding the switch from the Berresford reference, in order to prevent the device from functioning when no container is present.

Allowable Subject Matter

12. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

14. Applicant's arguments filed 03/02/2009 have been fully considered but they are not persuasive. Regarding applicant's arguments with respect to the Broll reference, the assertion that the Broll method would not be suitable for use with a part filled beverage container is not supported by any evidence and is therefore discounted. Regarding applicant's arguments with respect to the Jenny reference as applied to claim 2, the stopper in Jenny is valved in both directions. It is therefore, a bi-directional valved stopper. Regarding the similar arguments with respect to the XP reference, a new reference has been added to correct the noted deficiency.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz
Examiner
Art Unit 3751

/Timothy L Maust/
for Gregory Huson, SPE of Art Unit 3751